**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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| ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON,<br><br>Plaintiffs<br><br>v<br><br>APPLE INC.,<br><br>Defendant. | Civil Action No. 2:21-cv-376 |
| APPLE INC,<br><br>Counterclaim-Plaintiff<br><br>v<br><br>ERICSSON INC. AND TELEFONAKTIEBOLAGET LM ERICSSON,<br><br>Counterclaim-Defendants. | |

**APPLE INC.'S SUR-REPLY IN OPPOSITION TO ERICSSON'S "MOTION TO CONFIRM APPLE'S AGREEMENT TO BE BOUND"**

Apple has stated clearly and unambiguously on multiple occasions—including in the first line of its opposition—that it will be bound by the FRAND terms determined through the December trial. Try as Ericsson might to parse and twist Apple's words to fit Ericsson's distorted narrative, the reality is that Apple has been crystal clear from the outset. Ericsson is just unwilling to accept it. For all its talk of "basic hornbook law" and the fundamentals of litigation, Reply at 2-3, Ericsson continues to studiously ignore the actual claims and requests for relief at issue in this case. Ericsson's reply also notably omits any explanation for why its motion is not simply a request for reconsideration of the Court's ruling that Apple's claim for a determination of FRAND terms for a renewed cross-license will be tried as part of this case. *See* ECF 73 at 1.

***First***, Apple's affirmative FRAND claims have been merged in this case, and they will be adjudicated alongside Ericsson's claims at the December trial. *See* ECF 46 at 11-12. Accordingly, Ericsson is incorrect that its "sticker price" proposal alone is "the central issue to the breach of contract claims/counterclaims." Reply at 3. Ericsson's repetition of that position from its opening brief does not make it right. Apple's own positions as to FRAND—including its position that the parties' last agreement is a critical indicator of what's FRAND as between Apple and Ericsson—will also be evaluated.

***Second***, Apple, not Ericsson, has requested that the Court "set FRAND terms and conditions for a license for Apple to Ericsson's global portfolio of cellular SEPs, including by reference to the terms previously agreed upon by the parties in their 2015 License." ECF 67 ¶139(e). By contrast, Ericsson has only requested that the Court issue declarations of Ericsson's compliance with FRAND and of Apple's alleged non-compliance. ECF 51 at 22-23.

The bottom line is that given Apple's counterclaims, both parties will be free to advocate for their view of FRAND at trial, and both parties will be bound by the ultimate determination. Apple looks forward to resolving the parties' dispute at trial in December.

DATED: April 22, 2022

Respectfully submitted,

*/s/ Melissa R. Smith*

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**CERTIFICATE OF SERVICE**

I certify that on April 22, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

*/s/ Melissa R. Smith*